

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI
IN VACATION-----1981

EDGAR M. STAFFORD, ET AL

PETITIONERS

VS.

CAUSE NO. 81-1-33

CHARLES R. POGUE, ET AL

RESPONDENTS

DECREE ESTABLISHING EASEMENT AND
INJOINING INTERFERENCE THEREWITH

The sworn Petition of O'Neal Stafford, Edgar M. Stafford, Mrs. Lillian Stafford Gary and Mrs. Margaret Stafford Crumpler, it having been presented unto the Court on this day, whereby it is prayed that the Court establish an easement, and for other relief, and the Respondents, Charles R. Pogue, Foster H. Hilliard and Boyle Mortgage Company, *having been served with process in the manner and for the time prescribed by law and* having failed to file responsive pleadings in this cause, the Court is of the opinion and does so find as follows:

1. That the Petitioners are the owners in fee simple of the following described lands lying and being situated in DeSoto County, Mississippi:

The Southwest corner of the Northwest Quarter of Section 20, Township 3, Range 5 West, containing forty (40) acres, more or less, and being the same lands conveyed to J. Dave Stafford by Mrs. Mary Stafford, et al, by deed dated November 24, 1924, of record in Deed Book 21, at page 26, of the land records of DeSoto County, Mississippi.

LESS AND EXCEPT that certain 1.0 acre tract conveyed to Edgar Stafford, et ux, by deed dated February 15, 1963, of record in Deed Book 54, at page 549, of the land records of DeSoto County, Mississippi, to which recorded instrument reference is hereby made, together with an easement and right of way for ingress and egress as set forth therein and,

LESS AND EXCEPT that certain 5.0 acre tract conveyed to Jerold D. Achord, et ux, by deed dated March 28, 1973, of record in Deed Book 103, at page 143, of the land records of DeSoto County, Mississippi, to which recorded instrument reference is hereby made.

Filed 30 day of Jan 1981

H. B. [Signature]
E. Miller

2. That title to said lands did vest in the said Petitioners as tenants in common upon the death of their father, J. D. Stafford, who was also known as J. Dave Stafford, who died intestate on April 18, 1973, and who at the time of his death had a fixed place of residence in DeSoto County, Mississippi, and whose sole heirs at law were his children, the Petitioners, and his widow, Sallie W. Stafford, the mother of the Petitioners, who died intestate on February 10, 1980, and who at the time of her death had a fixed place of residence in DeSoto County, Mississippi, the said Petitioners being also the sole heirs at law of their said mother, Sallie W. Stafford.

3. That the said Petitioners and their said predecessors in title have, over a period in excess of fifty (50) years, acquired a prescriptive right to an easement by their adverse and continuous enjoyment of a right of way upon the lands of the Respondent Charles R. Pogue more particularly described herein, by their actual, open, hostile, peaceable, exclusive and continuous possession thereof, under this claim of ownership thereto.

4. That the lands upon which easement is asserted is described as lying and being situated in the Southeast quarter of the Northeast Quarter of Section 19, Township 3 Range 5 West, DeSoto County, Mississippi, and more particularly described as beginning at the Southeast corner of the Northeast Quarter of said Section 19; thence North 55 degrees, 40 seconds West 272 feet along Red Banks Road, a public road, to a point which is the point of beginning of said easement; thence northeastwardly along a wire fence north of a gravel drive 333 feet, more or less, to a point; thence south twelve (12) feet, more or less, to a point; thence southwestwardly parallel to said wire fence 333 feet, more or less, to a point; thence northwestwardly twelve (12) feet, more or less, to the point of beginning.

Page Three (3)

5. That title to the lands upon which said easement is located is believed to be exclusively vested in Charles R. Pogue by virtue of a warranty deed from Roy Gene Carson and his wife Jacquelin D. Carson dated June 27, 1980, of record in Deed Book 148, at page 151, of the land records of DeSoto County, Mississippi, a true and correct copy thereof being marked Exhibit A, attached to said petition, and made a part hereof as though fully set forth in words and figures. That said easement was located and did exist many years prior to this conveyance. That should said easement not lie exclusively upon the lands of the said Charles R. Pogue, the Court is of the opinion that said easement would, to an unknown extent, be located upon the lands of the said Respondent Pogue's predecessors in title, Foster H. Hilliard and his wife Emily P. Hilliard who were joined therein as Respondents.

6. That marked Exhibit A attached thereto and made a part hereof as though fully set forth in words and figures, is a plat of the said lands vested in the said Charles R. Pogue, Respondent, prepared by Ben W. Smith, Registered Professional Engineer, dated February 19, 1979.

7. That the easement asserted by Petitioners is identified as the twelve foot gravel drive indicated upon the said plat marked Exhibit A.

8. That the said easement has been the sole route of access from and to Red Banks Road, a public road to the lands of the Petitioners and their predecessors in title for more than fifty (50) years. That said easement is in fact the only route of access to the Petitioners lands and there has never been an alternate route of access available for ingress and egress to the said Petitioners' lands. That no objection to the use of said easement by Petitioners and their predecessors has ever been raised until the title to said lands vested in said Respondent Pogue. That the said Respondent has on at least one occasion attempted to deny use of said easement to Petitioners for ingress and egress to their said lands and said public road.

Page Four (4)

9. That should Petitioners be denied the use of said easement, they would be without access to and from said public road to their said lands.

10. That Petitioners have contracted for the sale of said lands and are unable to obtain from the said Respondent a proper instrument recognizing the existence of said located and established easement by prescription: That in the absence thereof, the Petitioners are unable to satisfy the terms of their contract for the sale of said lands with respect to conveying a right of way to and from said lands across the Defendant Pogue's lands to and from Red Banks Road.

11. That by virtue of the Petitioners' said adverse and continuous enjoyment and use of said easement for a period of more than fifty (50) years, Petitioners have acquired an easement by prescription thereupon and as such same does run with the land.

12. That the said lands of the Defendant are encumbered by a Deed of Trust held by Boyle Mortgage Company as evidenced by that instrument of record in Real Estate Trust Deed Book 239, at page 100, of the land records of DeSoto County, Mississippi, and were therefore made party Respondent hereto. That said Boyle Mortgage Company is a foreign corporation organized and existing by virtue of the laws of the State of Tennessee and qualified to do business in the State of Mississippi, and whose resident agent for process is C. T. Corporation, 118 N. Congress Street, Jackson, Mississippi 39201.

13. That should the Respondent's action persist, it will result in their inability to convey their said land resulting in irreparable harm to them.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Petitioners are hereby adjudicated to have an established easement by prescription for road purposes upon the

Page Five (5)

said lands and which are more particularly identified in Exhibit A, attached hereto, and incorporated herein by reference.

2. That said easement hereby established shall run with the land.

3. That the Respondents be and they are hereby permanently enjoined from interfering with the Petitioners' lawful use of said road right of way and easement for road purposes.

ORDERED, ADJUDGED AND DECREED this the 30th day of January, 1981.

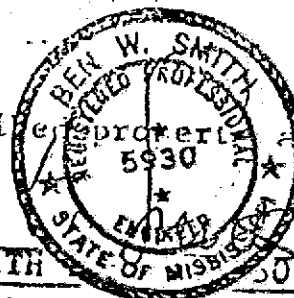
J E Mannaford, Jr.
CHANCELLOR



begin at the Southwest corner of the Northwest Quarter of Section 20, Township 3 South, Range 5 West, Desoto County, Mississippi; thence North 55 degrees 40' West 272 feet along public road to a point; thence Northeastwardly along wire fence north of gravel drive 333 feet to a point; thence South 10 feet to an iron pipe; thence East 600 feet to a point; thence South 363 feet to fence on half section line; thence West along said half section line 600 feet to the point of beginning and containing 5.9 acres. This property is not in a Flood Prone Zone.

SURVEYOR'S CERTIFICATE

I hereby certify that I have surveyed the above described property and that the plat is true and correct.



SURVEY - 5.9 AC - T5-3S, R-5W, SEC. 19/20 - DESOTO CO
MISS.

EXHIBIT A.

N. W. SMITH, RE.

2-19-79

STATE OF MISSISSIPPI, DESOTO COUNTY

I certify that the within instrument was filed for record at 2 o'clock 35 minutes P. M. 3 day of Feb. 1981, and that the same has been recorded in Book 150 Page 353 records of Right-Of-Way Deed of said County.

Witness my hand and seal this the 4 day of Feb. 1981.
Fee \$1.50 Pd.

SEAL

CLERK